

STORAGE NAME: h0965.fpr.doc

DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY AND RESOURCES
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 965

RELATING TO: Towns of Davie & Southwest Ranches

SPONSOR(S): Representative Ritter and other

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
 - (2) FISCAL POLICY AND RESOURCES
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill provides for the deannexation of a portion of the Town of Davie and the annexation of those lands into the Town of Southwest Ranches.

The bill provides for the confirmation of the effective date of the Town of Southwest Ranches on June 6, 2000.

The bill provides for an effective of upon becoming a law.

According to the Economic Impact Statement, the bill does not appear to create an economic impact on either the State or local government budgets.

Pursuant to House Rule 5.6(a) “if a committee or council determines that the substance of a local bill maybe enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill.” Since, a referendum is required to amend the Charter of the Town of Southwest Ranches, House Rule 5.6(a) appears not to prohibit the committee from reporting this bill to the Clerk. (See Section IV.C. “OTHER COMMENTS”)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Annexation

Constitutional/Statutory Provisions

Section 2(c), article VIII of the State Constitution authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property by local action.

The Legislature established local annexation procedures by general law in 1974, with the enactment of chapter 171, Florida Statutes. Chapter 171, Florida Statutes, named the "Municipal Annexation or Contraction Act," describes the ways that property can be annexed or de-annexed by cities without passage of an act by the Legislature. There are two types of annexations in Florida, voluntary and involuntary. With voluntary annexations, all property owners in the area proposed for annexation formally seek the annexation by petition. For an involuntary annexation to occur, at least a majority of the electors in the area proposed for annexation must vote in favor of the annexation. In addition, for the annexation to be valid under Chapter 171, Florida Statutes, the annexation must take place within the boundaries of a single county.

There is a twofold purpose of the Florida annexation laws: 1) to set forth local annexation/contraction procedures, and 2) to establish prerequisites for achieving the legislative goals of sound urban development, uniform legislative standards, and efficient provision of urban services.

Statutory Requirements That Must Be Met Before Annexation May Occur

Before local annexation procedures may begin, the governing body of the annexing municipality must prepare a report containing the city's plans for providing urban services to the proposed area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality. This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. The specified exceptions are

where the area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water.

- The area to be annexed must be reasonably compact.
- No part of the area to be annexed may fall within the boundary of another municipality.
- The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
 - Having a resident population of at least two persons per acre;
 - If 60 percent of the subdivided lots are one acre or less, having a density of one person (resident) per acre;
 - Having at least 60 percent of the subdivided lots used for urban purposes; or
 - Having at least 60 percent of the total urban residential acreage divided into lots of 5 acres or less.
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property--the amount to be assumed, its fair value, and the manner of transfer and financing.

Types of Annexations

Voluntary Annexation

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. The following procedures govern voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.
- Adoption of an ordinance by the governing body of the annexing municipality to annex the property after publication of notice at least once a week for 2 consecutive weeks, setting forth the proposed ordinance in full.

In addition, the annexation must not create enclaves. An enclave is:

- (a) Any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Upon publishing notice of the ordinance, the governing body of the municipality must provide a copy to the board of county commissioners of the county where the municipality is located.

Involuntary Annexations

A municipality may annex property where the property owners have not petitioned for annexation pursuant to section 171.0413, Florida Statutes. This process is called involuntary annexation. In general, the requirements for an involuntary annexation are:

- The adoption of an annexation ordinance of a "reasonably compact" area by the annexing municipality's governing body.
- Prior to the adoption of an annexation ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting being held on a weekday at least seven days after the first advertisement and the second meeting being held on a weekday at least five days after the first advertisement. (This new requirement was passed by the 1999 Legislature).
- Submission of the ordinance to a vote of the registered electors of the area proposed to be annexed once the governing body has adopted the ordinance. The registered electors of the annexing municipality may vote on the annexation if the governing body chooses to submit it to a vote. However, this vote is not required.

In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality. There is no requirement that the electors in the municipality approve an annexation ordinance regardless of the cumulative effect of such annexation.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes a part of the city. If there is no majority vote, that area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

Annexation of Enclaves

With the passage of chapter 93-206, Laws of Florida, (now found in section 171.046, Florida Statutes), the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. An enclave is (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

In 1993, the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. The intent of the legislation was to make it easier to

eliminate enclaves of small land areas. A separate process for annexing enclaves of 10 acres or less was created. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It may also annex an enclave with fewer than 25 registered voters by municipal ordinance, when the annexation is approved in a referendum by at least 60 percent of the voters in the enclave. These procedures do not apply to undeveloped or unimproved real property.

Annexation by Special Act

Subsection 171.044(4), Florida Statutes, provides that the procedures for voluntary annexation shall be "supplemental to any other procedure provided by general law or special law." There are a number of special annexation laws that exist in Florida, and hence special laws should always be checked prior to beginning annexation procedures. The Legislature may allow municipalities to annex property by passage of a special act and are empowered to waive any and all statutory requirements.

Annexation by Charter

Also provided in subsection 171.044(4), Florida Statutes, voluntary annexation procedures do not apply to municipalities and counties with charters that provide for an exclusive method of municipal annexation.

Effect of Annexation on an Area

Immediately upon being annexed, an area becomes subject to all laws, ordinances, and regulations applicable to other city residents. An exception is that *applicable county land use and zoning regulations continue in effect until the annexing municipality adopts a comprehensive plan amendment and rezones the area, pursuant to section 171.062(2), Florida Statutes. Also, the county land use plan, and zoning or subdivision regulations of the unincorporated area remain in effect (after the annexation has been approved) until the annexing municipality adopts a local comprehensive plan amendment to include the new area.* In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county.

Affected persons who believe they will suffer material injury because of the failure of the city to comply with annexation or contraction laws as they apply to their property can appeal the annexation ordinance. They may file a petition within 30 days following the passage of the ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If the appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.

Finally, any changes in municipal boundaries require revision of the boundary section of the municipality's charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.

Solid Waste Collection

Section 171.062(4), F.S. provides for continuing any exclusive franchised solid waste collection services that have been in effect for six months or longer. Such franchise shall continue to the newly annexed area for either 5 years or for the remainder of the franchise term, whichever is shorter. The municipality may allow the franchisee to continue servicing the area under the present franchise agreements, or the city may terminate the agreements if the franchisee does not agree to comply with certain statutory provisions relating to the quality of services or the costs of providing such services. Section 171.062(5), F.S. provides that a solid waste collection contract in effect at least 6 months prior to the annexation, may continue to provide services to the annexed area for 5

years or the remainder of the contract, whichever is shorter. The solid waste collection provider must provide written evidence of the contract duration, excluding any automatic renewals or "ever-green" provisions, within a reasonable time of a written request. This does not apply to single-family residential properties in specified enclaves.

Municipal Contraction (Deannexation)

In addition to adding land, municipalities may also redraw their boundaries to remove an area from the city through the contraction process. Contraction, also referred to as deannexation, is the reversion or removal of real property from municipal boundaries so that the removed section becomes an unincorporated area and is governed by the county. In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county. The deannexation process is described in section 171.051, Florida Statutes.

The city may propose an area for exclusion, or 15 percent of the qualified voters residing in an area may petition the municipal governing body to exclude that area from the city limits. If the contraction proposal is initiated by petition of the area residents, the governing body must conduct a feasibility study of the proposal and, within 6 months, decide to initiate contraction procedures or reject the petition and state the factual basis for such rejection.

Regardless of how the proposal is initiated, if the decision is made to seek contraction of the city's boundaries, the governing body must publish notice of the proposed contraction ordinance in a local newspaper once per week for 2 consecutive weeks. This notice must:

- describe the area to be excluded in the form of a map clearly showing the area to be excluded;
- show that the area fails to meet the general standards for annexation;
- set the time and place for consideration of the contracting ordinance; and
- advise that all affected persons may be heard.

Voter approval of the contraction may be required in two ways:

- The city governing body may simply call for a referendum election on the question in the area proposed for exclusion.
- The residents of the area proposed for exclusion may submit a petition to the city governing body, signed by at least 15 percent of the area's qualified voters, requesting a referendum on the question. If, at this point, the city governing body does not wish to hold a referendum it may simply vote not to contract the municipal boundaries.

If a referendum election is to be held in the area proposed for exclusion, the city governing body must set the date for the election and publish notice of the referendum at least once each week for the 2 weeks prior to the election.

If a majority of the voters in the referendum election vote in favor of contraction, the area will be removed from the city's jurisdiction on the date established in the contraction ordinance. If, however, the vote is against contraction, the area will remain within the city's jurisdiction. No part of that area may become the subject of another contraction proposal for 2 years from the date of the referendum.

For an area to be removed from a municipality, it must meet the following criteria:

- The area must fail to meet the criteria for annexation.
- The results of the contraction must not separate any portion of the municipality from the rest of the municipality.
- The contracting ordinance must provide for apportionment of any prior existing debt and property.

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles and a population of approximately 1.3 million residents. Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

In 1996, in cooperation with the Broward County Commission, the Broward County Legislative Delegation created the Ad Hoc Committee on Annexation Policy. The delegation charged the committee with the responsibility of developing and recommending policy to the Broward Legislative Delegation regarding the terms under which it would consider future annexations. The committee recommended that annexation of all the remaining unincorporated areas of Broward County should be encouraged to occur by the year 2010 and unincorporated areas remaining after 2010 will be subject to required annexation by the Florida Legislature.

The 1996 Florida Legislature adopted a special act (chapter 96-542, Laws of Florida, as amended by chapter 99-447, Laws of Florida), which exempts Broward County from the general law provision in chapter 171, Florida Statutes. This provision requires a referendum of the electors of an annexing municipality where the total area annexed by a municipality during a calendar year cumulatively exceeds more than 5 percent of the total land area of the municipality or cumulatively exceeds more than 5 percent of the municipal population.

In addition, the special act requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to general law first must be considered at a public hearing conducted by the Broward County Legislative Delegation, pursuant to its adopted rules. The annexation is not effective until the fifteenth day of September following adjournment sine die of the next regular legislative session following the accomplishment of all procedures necessary for annexation.

Annexations may also occur by special act of the Legislature. The Broward County Legislative Delegation sponsors several local bills each year to accomplish some annexations.

Town of Southwest Ranches

In 2000, the Legislature passed HB 1777 (enacted as chapter 00-475, Laws of Florida) which provided for the creation and charter of the Town of Southwest Ranches in Broward County, upon approval of the voters. On June 6, 2000, the electors voted on the incorporation and two alternative charters: (1) that the charter provide that the election of the mayor and council members are elected at-large with each council member residing within four separate districts and (2) that the charter provide that the election of the mayor and council members are at-large. The first alternative was approved by 59.05% of the votes.

Currently, there appears to be some confusion regarding the incorporation date of the Town of Southwest Ranches. Although HB 1777 provided that the incorporation was effective upon certification of the election results by the Broward County Supervisor of Elections (June 6, 2000), some residents believe that the incorporation was effective March 14, 2000. This is the date that the residents voted to either be annexed by the Town of Davie or Pembroke Pines or to incorporate. The incorporation alternative was approved by 95.54% of the votes. It appears as though the confusion lies in whether the Town of Southwest Ranches was incorporated on approval at referendum on March 14, 2000 or June 6, 2000. The effective date of the incorporation is June 6, 2000.

Procedures to amend the Town of Southwest Ranches' charter are located in Article VII. CHARTER AMENDMENTS of its charter. Section 7.01 provides that the charter may be amended pursuant to the article. The charter provides two methods for charter amendment: by ordinance adopted by the Council and approved at referendum; or by petition submitted by the electors pursuant to chapter 166, Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

This bill provides for the deannexation of a specific territory from the Town of Davie and provides for the annexation of that territory into the Town of Southwest Ranches.

The bill additionally provides confirmation of the effective date of the incorporation of the Town of Southwest Ranches as June 6, 2000.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides a legal description of lands proposed for deannexation from the Town of Davie.

Section 2. Provides that the corporate limits of the Town of Southwest Ranches is extended and enlarged to include the territory deannexed from the Town of Davie.

Section 3. Recognizes the effective date of incorporation of the Town of Southwest Ranches as June 6, 2000.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

November 3, 2001

WHERE?

Sun-Sentinel, published in Broward/Palm Beach/Miami Dade County

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Pursuant to House Rule 5.6(a) "if a committee or council determines that the substance of a local bill maybe enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill."

The Section 7.01, Article VII, Charter of the Town of Southwest Ranches provides two methods for charter amendment: by ordinance adopted by the Council and approved at referendum; or by petition submitted by the electors pursuant to chapter 166, Florida Statutes. Therefore, House Rule 5.6(a) does not appear to prohibit the committee or council from reporting this bill to the Clerk.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

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